APPEAL NO. 022177
FILED SEPTEMBER 24, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on August 9, 2002. The hearing officer determined that the respondent (claimant) was entitled to supplemental income benefits (SIBs) for the first quarter.

The appellant (carrier) appeals on a number of grounds including (1) that the claimant refused the employer's offer of light duty at the preinjury wage and that the referral to the Texas Rehabilitation Commission (TRC) was not appropriate; (2) that the claimant did not satisfactorily participate in a full time vocational program sponsored by the TRC because he did not look for work as required by the Individualized Plan for Employment (IPE); and (3) that he did not take the 12 credit hours required by the IPE. The claimant responded, urging affirmance.

DECISION

Affirmed.

Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) set out the statutory and regulatory requirements for SIBs. At issue in this case is whether the claimant met the good faith job search requirement of Section 408.142(a)(4) by enrolling in and satisfactorily participating in a full time vocational program sponsored by the TRC as set out in Rule 130.102(d)(2). The parties stipulated regarding the compensable injury, necessary impairment rating, that impairment income benefits were not commuted, that the first quarter qualifying period was from January 23 through April 23, 2002, and that the claimant did not seek any employment during the qualifying period. It was undisputed that the claimant had two-level fusion spinal surgery on September 6, 2000.

The carrier challenged the hearing officer's decision by asserting that the claimant refused a light-duty job paying his preinjury wages. The evidence regarding the light duty position is somewhat murky. Initially apparently a job as a "tracker" was discussed with the claimant but subsequently a position as a helper was offered. (We note the offers do not comply with the requirements of a bona bide offer of employment as set out in Rule 129.6). While the treating doctor only had a 50-pound lifting restriction, other medical evidence had a 20-pound lifting restriction and restrictions against kneeling, squatting, bending, and stooping. Even the employer's operations manager testified that only 75% of the helper position met the 50-pound lifting restriction and the claimant would have been expected to get other help for the 25% that was outside the 50-pound lifting position. The hearing officer commented that evidence supported the claimant's "concern in returning to the job offered by his employer in May 2001" (almost eight months prior to the qualifying period). We find no error in the

hearing officer's failure to consider this offer as evidence that the claimant's unemployment was not a direct result of his impairment during the qualifying period.

The claimant relies principally on Rule 130.102(d)(2) to establish his entitlement to SIBs. That rule provides that a good faith effort has been established if the claimant:

> (2) has been enrolled in, and satisfactorily participated in, a full time vocational rehabilitation program sponsored by the [TRC] during the qualifying period[.]

The hearing officer found:

FINDINGS OF FACT

> 2. The Claimant completed an IPE with TRC on August 6, 2001. The IPE set out an employment goal, any intermediate goals, a description of the services provided, the start and end dates of the described services and the Claimant's responsibilities. As part of this plan, Claimant agreed to enroll in 12 credit hours each semester.

The carrier asserts that part of the IPE requires the claimant to look for work and because he failed to do so he was not satisfactorily participating in the program. While it is true that portions of the IPE include statements such as "Employment/Job Search-Obtain leads from TRC, Texas Workforce Commission, school vendor, etc." and responsibilities of "Employment/Job Search-Follow-up on job leads," it is not at all clear whether all of the steps and responsibilities are to be performed simultaneously during any given period of time or whether the employment steps, goals, and responsibilities are to be undertaken after the training program has been completed. With this uncertainty we are unwilling to rule as a matter of law that the claimant has not complied with Rule 130.102(d)(2) or the TRC intended that the claimant simultaneously take 12 credit hours, maintain a 2.0 GPA, and participate in training as well as "obtain and maintain employment." In fact, if taken literally, an injured employee would not be in compliance with the requirement to "[o]btain and maintain employment" unless the employee was also working during the qualifying period.

Part of the IPE requires the claimant "[m]aintain at least 2.0 GPA and 12 credit hours each semester." The claimant testified, and is supported by the evidence, that he enrolled in four courses totaling 13 hours. (One course was a remedial course and would not have provided credit hours toward the claimant's planned associate degree). The claimant testified that he dropped one of the three hour courses in early April (apparently shortly before the end of the qualifying period) because he was failing the course. The carrier contends that this means that "the claimant completed 10, not 12 credit hours" and only received seven credit hours toward his degree. The hearing officer commented:

> There is no dispute that Claimant was enrolled in a program sponsored by the TRC. The evidence supported that Claimant had enrolled in at least enough hours to be considered full time. It was not until approximately the end of the qualifying period that Claimant had to drop a class. Classes did not end until May 12, 2002 which was well into the next qualifying period.

The hearing officer found that the claimant was "enrolled in a full time program sponsored by the TRC during the qualifying period" and that the claimant "satisfactorily participated in the program sponsored by TRC."

The carrier cites Texas Workers' Compensation Commission Appeal No. 010119, decided February 23, 2001 as suggesting that the "hearing officer's interpretation is incorrect as a matter of law." We disagree. In Appeal No. 010119 enrollment verification showed that the claimant in that case, was enrolled "half time" during the spring and not at all during the summer. (The qualifying period in Appeal No. 010119 was from April 24 through July 23, 2000). That consequently was not a "full time" vocational program required by Rule 130.102(d)(2). The carrier concedes in the instant case that the IPE "is ambiguous as to what '12 credit hours' means" and we would add is equally ambiguous as to whether the IPE requires a participant to search for work, and "[o]btain and maintain employment" while carrying 12 credit hours and maintaining a 2.0 GPA.

We have considered the evidence and the carrier's arguments and cannot conclude that the hearing officer's decision was wrong as a matter of law or that the hearing officer's determinations are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Accordingly, the hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **EAGLE PACIFIC INSURANCE COMPANY** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.

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Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Judy L. S. Barnes
Appeals Judge

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Elaine M. Chaney
Appeals Judge